

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MELANIE DAVIS,

Plaintiff,

vs.

AK-SAR-BEN VILLAGE, L.L.C.,

Defendant.

8:18CV101

MEMORANDUM AND ORDER

This matter is before the Court on an order by the magistrate judge, [Filing No. 109](#), to reimburse the defendant's second motion for costs and attorney fees, [Filing No. 107](#), in the amount of \$6,792.00. According to defense counsel the magistrate judge's office contacted the defendant's counsel, [Filing No. 110-1](#), to determine if the costs and attorney fees had been paid. Upon receiving an answer in the negative, the magistrate judge then filed a "CERTIFICATION OF THE FACTS OF CONTEMPT AND NOTICE OF HEARING" pursuant to 28 U.S.C. § 636(e)(6)(B)(iii)¹, setting a hearing before this Court as to why the plaintiff she should not held in contempt.

¹ If a magistrate judge believes an instance of contempt has occurred in a civil case referred to that magistrate judge for management of pretrial matters, the magistrate may "forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior is brought into question under this paragraph, an order requiring such person to appear before a district judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so certified. The district judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a district judge.

28 U.S.C. § 636(e)(6)(B)(iii).

The Court held a hearing on October 29, 2020. Neither plaintiff nor her counsel attended. Upon a review of the record, the Court notes that this hearing was not necessary. The Order of the magistrate judge had already been entered, assessing costs against the plaintiff. This case was dismissed by this Court on September 18, 2020. [Filing No. 108](#).

The Court notes that plaintiff has cerebral palsy and is wheelchair bound. She has not filed an income tax return since 2012. The defendant did not file a motion for contempt, and in fact, the magistrate judge initiated the communication with defense counsel, after the case was dismissed. See Filing Nos. 108 and 110-1. If defendant wants to pursue the plaintiff for attorney fees and costs, it may do so by executing the judgment.

Accordingly, the Court concludes that there was no reason for any other determination. The case was already dismissed. The Court will enter a final judgment in accordance with Filing No. 108 and this Memorandum and Order.

Dated this 29th day of October, 2020.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge